IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1178 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LABHKUNVERBEN KARSANJI

Versus

JORSING JESHING @ TAPUBHAI JESING (DECD)

Appearance:

MR SAMIR BUNDELA FOR MR PM RAVAL for the Petitioner

MR JJ YAGNIK for the Respondent No. 1

RULE SERVED for Respondent No. 1/1-3

DELETED for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/10/2002

ORAL JUDGEMENT

This Revision Application arises from the

judgment and order dated 23rd December, 1985 passed by the learned District Judge, Rajkot in Regular Civil Appeal No.226/1982. The petitioner before this Court is the appellant - plaintiff.

The plaintiff instituted Regular Civil Suit No.23/1976 in the Court of Civil Judge (J.D.), Jasdan for recovery of possession of the suit premises and the arrears of rent. The premises in question (hereinafter referred to as 'the suit premises') is a part of the residential house situated at Jasdan. The suit premises was leased to the defendant for a monthly rent of Rs.15=00. The defendant had executed a rent note (Ex.66) on 5th June, 1968. According to the plaintiff, the defendant was in arrears of rent since 1st September, 1973. On the date of the suit a sum of Rs.390=00 was due from the defendant towards the rent and a sum of Rs.16=50 was due being the amount of house tax. A notice of demand (Ex.67) was given to the defendant on 12th December, 1975. The tenancy of the defendant was also terminated under the said notice. However, the defendant neglected to pay the amount of rent due.

The suit was contested by the defendant by filing written statement (Ex.11). He denied the allegations made by the plaintiff and also raised a dispute as to the standard rent of the suit premises. According to him, the standard rent of the suit premises was Rs.4=00 to Rs.5=00 per month. The learned trial Judge, under the judgment and order dated 31st August, 1982, dismissed the suit with respect to the possession and the arrears of rent since 1st September, 1973. The learned Judge was pleased to hold that the rent was due from 1st January, 1976 to 1st April, 1976. The standard rent of the suit premises was fixed at Rs.12=00 per month. Accordingly, the defendant was directed to pay a sum of Rs.48=00 as the rent due.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No.226/1982 in the Court of District Judge, Rajkot. The learned District Judge, under the impugned judgment and order dated 23rd December, 1985, allowed the appeal partially. The learned District Judge was pleased to hold that the defendant - tenant was in arrears of rent since 1st September, 1973, and accordingly ordered recovery of a sum of Rs.406=50 being the amount of rent due and the house tax demanded. The learned District Judge also fixed the standard rent of the suit premises at Rs.15=00 per month. The learned Judge, however, refused the decree for possession. Feeling aggrieved, the plaintiff has preferred the

present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

Mr.Bundela has submitted that the learned District Judge has committed a manifest error in holding that the defendant was protected by Section 12(3)(b) of the Rent Act and that he had complied with the conditions specified in the said Section 12(3)(b). Mr.Bundela has submitted that indisputably the rent of the suit premises was payable by the month and that the defendant was in arrears of rent for six months and more. The defendant neglected to pay the amount of rent due within one month from the date of the receipt of the suit notice, nor did he raise dispute as to the standard rent before expiration of such one month. The case should, therefore, be governed by Section 12(3)(a) of the Rent Act and the decree for possession should necessarily follow. In the alternative, he has submitted that even if the case were governed by Section 12(3)(b) of the Rent Act, the defendant has failed to comply with the conditions specified in the said Section 12(3)(b). Not only the defendant did not deposit the amount of rent due on the first day of hearing of the suit, but he did not pay any amount towards the rent due till the date of the decision of the suit and even thereafter. Even, pending the appeal, the defendant did not deposit the monthly rent regularly. The defendant has, thus, forfeited his right to protection conferred under Section 12(3)(b) of the Rent Act and, the decree for possession ought to have been passed.

I see some substance in the alternative argument advanced by Mr.Bundela. Admittedly under the suit notice the defendant was called upon to remit the amount of rent due since 1st September, 1973 and also the amount of house tax. It is not the case of the plaintiff that the amount of house tax was payable every month. Thus, part of the rent can not be said to be payable by the month. All the conditions specified in the said Section 12(3)(a) can not be said to be satisfied. The case should, therefore, be governed by Section 12(3)(b) of the Rent Act. It is also not disputed that pending the suit the defendant did raise dispute as to the standard rent by taking necessary plea in his written statement. No interim standard rent was fixed by the Court as envisaged under Section 11(3) of the Rent Act. Standard rent was determined alongwith the other issues arising in the suit. Thus, the defendant may claim that until the date of the decision of the suit he had no clue how much amount he should deposit by way of monthly rent.

However, once the standard rent was determined, it was the duty of the defendant to deposit such amount regularly every month. In the present case, admittedly, pending the appeal the defendant did not pay the monthly rent due. The learned District Judge has reasoned that all that was found due from the defendant was the rent for four months from 1st January, 1976 to 30th April, 1976. The period being less than six months, the defendant was protected by Section 12(3)(b) of the Rent Act. Besides, in appeal also the plaintiff appellant did not seek direction to the defendant to pay the amount of rent due or to fix the interim rent pending the appeal. I am afraid, I am unable to agree with the reasoning of the learned District Judge. Once the standard rent was fixed by the trial Court, it was the duty of the defendant to deposit the arrears of rent and also to pay the monthly rent regularly. In the present case, admittedly, the defendant has failed to pay the arrears of rent due and the monthly rent regularly pending the appeal. The plaintiff was under no obligation to invite an order directing the defendant to pay the monthly rent due regularly pending the appeal. In my view, the defendant failed to comply with the conditions specified under Section 12(3)(b) of the Rent Act i.e. the defendant failed to tender in Court the standard rent and permitted increases pending the appeal. The defendant has, thus, forfeited his right to protection under Section 12(3)(b) of the Rent Act. The decree for eviction should, therefore, necessarily follow.

In the result, the Revision Application is allowed with costs. The impugned judgment and order dated 23rd December, 1985 passed by the learned District Judge, Rajkot in Regular Civil Appeal No.226/1982 in so far as it refuses the decree for possession is quashed and set aside. The Regular Civil Suit No.23/1976 stands allowed. The defendant is directed to handover the vacant possession of the suit premises to the plaintiff. Rule is made absolute.

(Ms. R.M.Doshit, J.)

/sakkaf